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SUPREME COURT, U. S.

No. **43**

FILED

MAR 27 1968

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**IN THE
SUPREME COURT OF THE UNITED STATES.**

OCTOBER TERM, 1966.

LESTER J. ALBRECHT,
Petitioner,

VS.

**THE HERALD COMPANY, a Corporation, d/b/a
GLOBE-DEMOCRAT PUBLISHING COMPANY,**
Respondent.

MOTION FOR REHEARING.

LON HOCKER,
Attorney for Respondent.

Of Counsel:

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No. 975.

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966.

LESTER J. ALBRECHT,
Petitioner,

vs.

THE HERALD COMPANY, a Corporation, d/b/a
GLOBE-DEMOCRAT PUBLISHING COMPANY,
Respondent.

MOTION FOR REHEARING.

Respondent prays the Court to grant it a rehearing in the above cause.

For grounds of its motion, respondent states:

The Court has entered its order in this case without passing upon the question of whether it had jurisdiction to do so. This question was clearly before it, raised by

(a) Respondent's Motion to Dismiss for Want of Jurisdiction;

(b) Respondent's brief, Point I; and

(c) Respondent's Oral Argument.

The Court has ignored, without comment, and presumably without consideration, the constitutional claims of respondent, specified and applied to the circumstances of this case, in a motion and in a brief, each of which conforms in all respects to the requirements of the rules of this Court. Eleven provisions of the Constitution are invoked. Cited and quoted in support of the argument are twenty-seven opinions of this Court, twelve decisions of other courts, and seventeen other authorities. The argument is developed in fifteen sections on thirty-seven pages of suggestions. In the four opinions filed, *not one word* is devoted to the question.

Counsel for respondent, a member of the bar of this Court, signs this motion and these suggestions not only in the representation of his client, but as well as in the assertion of a point of personal privilege:

Is not counsel (who has spent weeks and months of his life in preparing and regularly presenting an extensively developed argument that on constitutional grounds the Court has no jurisdiction to grant the only relief sought by petitioner) entitled to the courtesy (as his client is entitled to the justice), if not of a discussion, at least of a decision, of the question raised?

If procedural due process requires a *hearing*, must it not too require a *decision* on the argument heard?

* * * * *

The Court's record in this matter shows:

July 3, 1967. Respondent's Motion to Dismiss for Want of Jurisdiction with Supporting Brief filed.

July 28, 1967. Petitioner's Brief in Opposition to Respondent's Motion to Dismiss filed.

October 5, 1967. Respondent's Brief filed. Point I thereof is captioned:

"The Court lacks Jurisdiction to Grant the Relief Sought"; the brief sets forth the constitutional provisions relied upon and incorporates by reference the argument of the Motion to Dismiss (page 9).

October 9, 1967. The Court entered an order: "Further consideration of the motion of respondent to dismiss the writ of certiorari is postponed to the hearing of the case on the merits."

October 14, 1967. Respondent's Motion to Transfer Case from Summary Calendar to Regular Calendar filed. This argued (page 2): "The questions raised in the motion [to dismiss] are of vast importance not only to present and inevitable future litigation, but to fundamental concepts of government under the United States Constitution; . . ."

October 23, 1967. The Court ordered: "The Motion of Respondent to remove this case from the summary calendar is denied."

March 4, 1968. Four opinions were filed. The Court ordered: "The judgment of the Court of Appeals is reversed and the case is remanded to that court for further proceedings consistent with this opinion."

No disposition of the motion has been made!

For aught that the Court's records show, it is still pending. Yet the case is remanded for further proceedings consistent with the principal opinion. Since the Supreme Court did not, in its opinion or otherwise, pass upon the constitutional questions, would it not be consistent with the opinion for the Court of Appeals to dismiss the appeal on the remand—not on the grounds on which it was reversed—but on grounds that under the Constitution it had no jurisdiction of the subject matter of the litigation? Or is the Court of Appeals to guess among the possibilities: (a) that in the press of the Court's immensely heavy work-

load, the question was simply overlooked, (b) that it was considered to have been raised prematurely, since there was as yet no judgment against (and hence, no punishment of) respondent, or (c) that the motion was tacitly overruled, because (as seems to be implied by Mr. Justice Fortas' question at the argument, "We have decided such cases, haven't we?") the constitutional question is either too absurd or too difficult to discuss?

Common justice as well as common courtesy, we submit, requires that respondent's day in Court result in a decision of this question, honestly raised and directly presented by the record before the Court.

This Court has exercised jurisdiction, inadvertently, we feel, in the face of an as yet undisposed-of challenge thereof on multiple constitutional grounds.

A rehearing should be ordered so that the constitutional claims of respondent may be considered and determined.

Respectfully submitted,

LON HOCKER,
411 North Seventh Street,
St. Louis, Missouri 63101,
Attorney for Respondent.

LON HOCKER, a member of the bar of the Supreme Court, hereby certifies that the foregoing Motion for Rehearing was prepared by him and is presented in good faith for the reasons stated therein and not for delay.

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March 20, 1968.

